IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17329 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAHLAD RADHESHYAM VERMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17329 of 2003

Mr A K Pandya for MS KRISHNA U MISHRA for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 17.11.2003 passed by

respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that two FIRs were registered against the petitioner before Prohibition police station, Eastern division and Bapunagar police station C.R. Nos. 146/03 and 5103/2003 on 14.1.2003 and 14.11.2003 respectively. It was also alleged against the petitioner that two witnesses had rendered statements against the petitioner. That their names were not disclosed to the petitioner. Therefore, the detaining authority found the petitioner to be a bootlegger and that with a view to prevent him from carrying on bootlegging activities leading to a threat to public order or public health, he was ordered to be detained by the order of detention impugned in this petition.

3. The petitioner has challenged the detention order on several consideration. It has been contended that the petitioner was in custody in one of the two cases. Therefore, there was no need to immediately detain he petitioner. That the names of the witnesses have not been disclosed. Therefore, the petitioner could not submit effective representation against the detention. That therefore, the order of detention is illegal. The petitioner has therefore, claimed that the present petition be allowed and the order passed against him be quashed and set aside.

4. On receiving the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. She has produced affidavit filed by the detaining authority which is taken on record. I have heard the learned Advocates for the parties and perused the papers.

5. It is contended that the petitioner was enlarged on bail with respect to the first offence. However, according to the argument, with respect to the second offence the petitioner was in police custody and therefore, there was no immediate need to detain the petitioner. From the grounds stated in the detention order at page 20 makes it clear that two offences were registered against the petitioner and the petitioner was on bail in one of the two cases. However, in the second offence, the petitioner was in police custody. An observation made was that on expiry of the period of remand, the petitioner would be produced before the

concerned court and thereafter the petitioner would apply for bail and get himself bailed out and then continue his activities as bootlegger.

5. In this respect, learned Advocate for the petitioner has relied upon a decision in the case of Amritlal v. Union Government, reported in AIR 2000 SC 3675. It would be worthwhile to refer the relevant observations therefrom hereinbelow:

> "There must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail."

7. On going through the said judgment, it is clear that the detaining authority should have some material with him to show that the petitioner would apply for bail and he may get himself bailed out. In the present case also the observation is that the petitioner is in police custody, that he will be produced before the concerned Magistrate and thereafter he may be taken to judicial custody and thereafter he may apply and get himself released on bail. As decided in the aforesaid decision, it cannot be said that the detaining authority had material to say that the petitioner would apply for bail and thereafter he would get himself bailed out. Therefore, it cannot be said that there was immediate need to detain the petitioner. In that case, the order of detention cannot be sustained.

7. With respect to the statements of the two witnesses, their names have not been disclosed and, therefore, the petitioner could not effectively submit his representation. The detaining authority has claimed power of privilege under section 9(2) of the Act. As decided by this Court (Coram: Hon'ble Mr Justice A L Dave) in Special Civil Application No.294/2000 on 19.4.2000, before considering the statements of unnamed witnesses, the detaining authority is required to verify the genuineness and correctness of the statements made by the witnesses with respect to the fear and apprehension expressed by them. I do not find any credible material

on record to show that such an enquiry has been undertaken by the detaining authority. In that view of the matter, statements of the unnamed witnesses could not have been considered without disclosing their names. Since the names have not been disclosed, the petitioner is deprived of his right to effectively represent his defence guaranteed under Article 22 (5) of the Constitution of India. Therefore, even on this ground, the order of detention fails and it deserves to be quashed and set aside.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 17.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp